

[4830-01-p]

Published July 18, 2005

DEPARTMENT OF THE TREASURY

26 CFR Part 301

TD 9215

RIN 1545-BC46

Substitute for return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations and removal of final regulations.

SUMMARY: This document contains temporary regulations relating to returns prepared or signed by the Commissioner or other internal revenue officers or employees under section 6020 of the Internal Revenue Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective July 18, 2005.

Applicability Date: For dates of applicability, see § 301.6020-1(d).

FOR FURTHER INFORMATION CONTACT: Tracey B. Leibowitz, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 301 under section 6020 of the Internal Revenue Code (Code). Section 301.6020-1 of the Procedure and Administration Regulations provides for the preparation or execution of returns by authorized internal revenue officers or employees. Section 1301(a) of the Taxpayer Bill of Rights Act of 1996, Pub. L. No. 104-168 (110 Stat. 1452), amended section 6651 to add subsection (g)(2), which provides that, for returns due after July 30, 1996 (determined without regard to extensions), a return made under section 6020(b) shall be treated as a return filed by the taxpayer for purposes of determining the amount of the additions to tax under section 6651(a)(2) and (a)(3). Absent the existence of a return under section 6020(b), the addition to tax under section 6651(a)(2) does not apply to a nonfiler.

In Cabirac v. Commissioner, 120 T.C. 163 (2003), aff'd in an unpublished opinion, No. 03-3157 (3rd Cir. Feb. 10, 2004), and Spurlock v. Commissioner, T.C. Memo. 2003-124, the Tax Court found that the Service did not establish that it had prepared and signed a return in accordance with section 6020(b). In Spurlock, the Tax Court held that a return for section 6020(b) purposes must be subscribed, contain sufficient information from which to compute the taxpayer's tax liability, and the return and any attachments must "purport to be a return." Spurlock, slip op. at 27.

These temporary regulations provide that a document (or set of documents) signed by an authorized internal revenue officer or employee is a return under section

6020(b) if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purports to be a return under section 6020(b). A Form 13496, "IRC Section 6020(b) Certification," or any other form that an authorized internal revenue officer or employee signs and uses to identify a document (or set of documents) containing the information set forth above as a section 6020(b) return, and the documents identified, constitute a valid section 6020(b) return.

Further, because the Service prepares and signs section 6020(b) returns both by hand and through automated means, these regulations provide that a name or title of an internal revenue officer or employee appearing upon a return made in accordance with section 6020(b) is sufficient as a subscription by that officer or employee to adopt the document as a return for the taxpayer without regard to whether the name or title is handwritten, stamped, typed, printed or otherwise mechanically affixed to the document. The document or set of documents and subscription may be in written or electronic form.

These temporary regulations do not alter the method for the preparation of returns under section 6020(a) as provided in TD 6498. Under section 6020(a), if the taxpayer consents to disclose necessary information, the Service may prepare a return on behalf of a taxpayer, and if the taxpayer signs the return, the Service will receive it as the taxpayer's return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz, of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended to read as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6020-1 [Removed]

Par. 2. Section 301.6020-1 is removed.

Par. 3. Section 301.6020-1T is added to read as follows:

§ 301.6020-1T Returns prepared or executed by the Commissioner or other internal revenue officers (temporary).

(a) Preparation of returns-- (1) In general. If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the Commissioner or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the Commissioner as the return of such person.

(2) Responsibility of person for whom return is prepared. A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) Execution of returns -- (1) In general. If any person required by the Code or by the regulations prescribed thereunder to make a return (other than a declaration of estimated tax required under section 6654 or 6655) fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized internal revenue officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. The Commissioner or other authorized internal revenue officer or employee may make the return by gathering information and making computations through electronic, automated or other means to make a determination of the taxpayer's tax liability.

(2) Form of the return. A document (or set of documents) signed by the Commissioner or other authorized internal revenue officer or employee shall be a return for a person described in paragraph (b)(1) of this section if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purports to be a return. A Form 13496, "IRC Section 6020(b) Certification," or any other form that an authorized internal revenue officer or employee signs and uses to identify a set of documents containing the information set forth above as a section 6020(b) return, and the documents identified, constitute a return under section 6020(b). A return may be signed by the name or title of an internal revenue officer or employee being handwritten, stamped, typed, printed or otherwise mechanically affixed to the return, so long as that name or title was placed on the document to signify that the internal revenue officer or employee adopted the document as a return for the taxpayer. The document and signature may be in written or electronic form.

(3) Status of returns. Any return made in accordance with paragraph (b)(1) of this section and signed by the Commissioner or other authorized internal revenue officer or employee shall be prima facie good and sufficient for all legal purposes. Furthermore, the return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition to tax under section 6651(a)(2) and (3).

(4) Deficiency procedures. For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 to 6216, inclusive, and §§ 301.6211-1 to 301.6215-1, inclusive.

(5) Employment status procedures. For pre-assessment procedures in employment taxes cases involving worker classification, see section 7436 (proceedings for determination of employment status).

(6) Examples. The application of this paragraph (b) is illustrated by the following examples:

Example 1. Individual A, a calendar-year taxpayer, fails to file his 2003 return. Employee X, a Service employee, opens an examination related to A's 2003 taxable year. At the end of the examination, X completes a Form 13496 and attaches to it the documents listed on the form. Those documents explain examination changes and provide sufficient information to compute A's tax liability. The Form 13496 provides that the Service employee identified on the Form certifies that the attached pages constitute a return under section 6020(b). When X signs the certification package, the package constitutes a return under paragraph (b) of this section because the package identifies A by name, contains A's taxpayer identifying number (TIN), has sufficient information to compute A's tax liability, and contains a statement stating that it constitutes a return under section 6020(b). In addition, the Service shall determine the amount of the additions to tax under section 6651(a)(2) by treating the section 6020(b) return as the return filed by the taxpayer. Likewise, the Service shall determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 2. Same facts as in Example 1, except that, after performing the examination, X does not compile any examination documents together as a related set of documents. X also does not sign and complete the Form 13496 nor associate the forms explaining examination changes with any other document. Because X did not sign any document stating that it constitutes a return under section 6020(b) and the documents otherwise do not purport to be a section 6020(b) return, the documents do not constitute a return under section 6020(b). Therefore, the Service cannot determine the section 6651(a)(2) addition to tax against nonfiler A for A's 2003 taxable year on the basis of those documents.

Example 3. Individual C, a calendar-year taxpayer, fails to file his 2003 return. The Service determines through its automated internal matching programs that C received reportable income and failed to file a return. The Service, again through its automated systems, generates a Letter 2566, "30 Day Proposed Assessment (SFR-01) 910 SC/CG." This letter contains C's name, TIN, and has sufficient information to compute C's tax liability. Contemporaneous with the creation of the Letter 2566, the Service, through its automated system, electronically creates and stores a certification stating that the electronic data contained as part of C's account constitutes a valid return under section 6020(b) as of that date. Further, the electronic data includes the signature of the Service employee authorized to sign the section 6020(b) return upon its

creation. Although the signature is stored electronically, it can appear as a printed name when the Service requests a paper copy of the certification. The electronically created information, signature, and certification is a return under section 6020(b). The Service will treat that return as the return filed by the taxpayer in determining the amount of the section 6651(a)(2) addition to tax with respect to C's 2003 taxable year. Likewise, the Service shall determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 4. Corporation M, a quarterly taxpayer, fails to file a Form 941, "Employer's Quarterly Federal Tax Return," for the second quarter of 2004. Q, a Service employee authorized to sign returns under section 6020(b), prepares a Form 941 by hand, stating Corporation M's name, address, and TIN. Q completes the Form 941 by entering line item amounts, including the tax due, and then signs the document. The Form 941 that Q prepared and signed constitutes a section 6020(b) return because the Form 941 purports to be a return under section 6020(b), the form contains M's name and TIN, and it includes sufficient information to compute M's tax liability for the second quarter of 2004.

(c) Cross references -- (1) For provisions that a return executed by the Commissioner or other authorized internal revenue officer or employee will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) and § 301.6501(b)-1(e).

(2) For determining the period of limitations on collection after assessment of a liability on a return executed by the Commissioner or other authorized internal revenue officer or employee, see section 6502 and § 301.6502-1.

(3) For additions to the tax and additional amounts for failure to file returns, see sections 6651 and § 301.6651-1, and section 6652 and § 301.6652-1, respectively.

(4) For additions to the tax for failure to pay tax, see section 6651 and § 301.6651-1.

(5) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203.

(6) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(7) For civil penalties for filing frivolous income tax returns, see section 6702.

(8) For authority to examine books and witnesses, see section 7602 and § 301.7602-1.

(d) Effective date. This section applies to returns prepared under section 6020 after July 18, 2005. The applicability of this section expires on July 14, 2008.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: July 12, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary (Tax Policy).